UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOTHEBY'S, INC.,

Plaintiff,

*- against -*

LIONEL DE SAINT DONAT-POURRIERES,

Defendant,

**Case No: 17-cv-00326 (GBD)**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

KELLNER HERLIHY GETTY & FRIEDMAN, LLP.
470 Park Avenue South, 7th Floor North
New York, New York 10016
Telephone: (212) 889-2821
Email: tv@khgflaw.com

*Attorneys for Defendant*

Of counsel:
Thomas Vandenabeele
Tamara P. Salzman

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## PRELIMINARY STATEMENT

Defendant Lionel de Saint Donat-Pourrieres ("Pourrieres") respectfully submits this Memorandum of Law in support of his motion to dismiss the complaint pursuant to Fed. R. Civ. P 12(b)(6), and the doctrine of *forum non conveniens;* or in the alternative, this Court should stay proceeding until the resolution of a pending criminal proceeding in France ("the French Action").

*First*, Sotheby's Inc. failed to state a claim for breach of contract because the complaint does not plead that a notice of intention to rescind from the purchaser of the painting was received or that the purchaser was credited with the purchase price. Under the contract relied upon by plaintiff and incorporated by reference to its complaint, both the notice of intention and the reimbursement of the sale price are mandatory prerequistes to Pourrieres returning the sale proceeds to plaintiff. In the absence of any of these two triggering events that plaintiff does not allege, the complaint fails to state a claim upon which relief can be granted.

*Second*, given the unique set of facts that plaintiff has conveniently concealed from this Court, this action should be dismissed on the ground of *forum non conveniens:* Sotheby's is also seeking monetary relief in a pending related criminal proceeding in France that predates the commencement of this lawsuit involving the same subject matter, a determination of the authenticity of the painting *Saint Jérôme* and of the rights of Sotheby's and Pourrieres to that painting. The *Saint Jérôme* (the "Painting") is currently located in Paris, France and attached there by order of a French Court after Sotheby's deliberately transferred the Painting to its Paris offices a few days before the attachment order was entered. Pursuant to French criminal procedure, Sotheby's filed a complaint in France seeking monetary relief in that criminal proceeding *before* Sotheby's filed the instant complaint. Pourrieres is not a resident of New York and has never set foot in New York, or in the United States, in connection with the Painting or with any of his business dealings with Sotheby's; and the transactions and events at issue bear virtually no relationship to New York.

**STATEMENT OF FACTS**

Pourrieres is a French citizen who purchased the Painting in 1995. (See Pourrieres Decl. at ¶4). At the time of purchase the Painting was attributed to the Flemish school of the seventeenth century. *Id.* Pourrieres purchased the painting in France from seller Jean-François Ferrillon ("Ferrillon"), who had acquired the painting from French collector Giuliano Ruffini ("Ruffini") (*Id.*). In or about 1995 a Parisian expert in the field of art, named Eric Turquin ("Turquin") attributed the painting to the school of Parmigianino. *Id.*

In 2011, Pourrieres met with Pierre Etienne ("Etienne"), a Senior Director and Head of Old Master Paintings and Drawings for Sotheby's in France who had worked with Turquin for many years (*Id.* at ¶5). When Etienne met with Pourrieres in Paris, Etienne represented that he was very familiar with the painting and fully aware of the painting's provenance and history. *Id.*

Etienne pressed Pourrieres to consign the painting to Sotheby's to be sold at auction in New York. (*Id.* at ¶6). In or about 2011, Etienne facilitated a lunch meeting in Paris between Pourrieres and George Wachter ("Wachter"), the Co-Chairman of Old Master Paintings Worldwide for Sotheby's. Wachter traveled from New York to Paris for this lunch meeting, where Etienne acted as an interpreter. *Id.*

Based on Wachter's representations to Pourrieres, that he had no doubt regarding the authenticity of the Painting, Wachter convinced Pourrieres to agree to consign the Painting to Sotheby's to be sold at a Sotheby's Old Masters auction. (*Id.* at ¶7). On or about May 26, 2011, Pourrieres entered into a consignment agreement (the "Contract") with Sotheby's for the sale of the Painting. (*Id.* and Exhibit 1 to Pourrieres Decl.) Pourrieres and Etienne (on behalf of Sotheby's) both signed the Contract in Paris.

*Id.* In January 2012, the Painting was sold at an auction held at Sotheby's New York. (*Id.* at ¶8).

Nearly five years later, in or about September 2016, Sotheby's engaged the company Orion Analytical, LLC ("Orion") to conduct a technical and scientific examination of the Painting. (*Id.* at ¶9). Orion concluded that the Painting contained paint used to create, and not restore the work, that contained green particles that did not exist during the sixteenth century, and that therefore the Painting must be a forgery. Coincidentally, plaintiff acquired Orion in December 2016. (*Id.* at ¶19) To date, despite Pourrieres' insistence, the Painting has not been examined by any other lab or scientific means. (*Id.*).

Just prior to the expiration of the Terms of Guarantee (the "Guarantee") referred to in the complaint, Pourrieres received a letter from Sotheby's dated October 4, 2016, in which Sotheby's informed Pourrieres that Sotheby's was rescinding the sale to the purchaser of the painting, based on the findings of Orion. (*Id.* at ¶8). Pourrieres and Sotheby's, via its general counsel Jonathan Olsoff ("Olsoff") engaged in a series of emails in regard to plaintiff's rescission of the contract. Specifically, Pourrieres requested an opportunity to obtain a further analysis of the painting to confirm the conclusions of Orion. (*Id.* at ¶11 and Ex. 2 to Pourrieres Decl.).

Sotheby's indicated that they had no objection to such testing, and on December 15, 2016, consistent with their agreement to conduct a second test, Olsoff sent Pourrieres a tolling agreement that would, once signed by Pourrieres, suspend the running of the five-year rescission period under the Contract. (Pourrieres Decl. at ¶12 and Ex. 2 to Pourrieres Decl.). Then, on December 20, 2016, while Pourrieres was awaiting completion of the legal translation of the tolling agreement, and the advice of counsel in regard to the tolling agreement, Olsoff wrote an email to Pourrieres laconically stating that plaintiff no longer intended to enter into a tolling agreement. *Id.*

Shortly after withdrawing the tolling agreement, Olsoff wrote another email to Pourrieres on January 3, 2017, stating that the painting would be arriving in Paris to be used as evidence in an ongoing investigation by an Investigative Magistrate in Paris. (Pourrieres Decl. at ¶13 and Ex. 2 to Pourrieres Decl.). Despite the fact that there is no consensus that the Painting is a forgery[1], and rather than wait for the conclusion of the French Action, Olsoff informed Pourrieres that based on the findings of Orion, Sotheby's was now rescinding the sale under the Contract, and demanded that Pourrieres remit to plaintiff $672,000 by the close of business day on January 10, 2016, or Sotheby's would commence proceedings against Pourrieres without further notice (*Id.* at ¶13). What Pourrieres did not know at the time was that Sotheby's, which presumably knew or anticipated that the Painting would be attached in connection with its French criminal proceeding, had suddenly changed its strategy and was suddenly rushing to bring suit against Pourrieres in New York; before Sotheby's could no longer avoid informing this Court that it is a joint plaintiff in a criminal action seeking civil remedies, and that the Painting is attached in France and can no longer be returned to Pourrieres (see Declaration of French attorney Alain Leopold Stibbe at ¶4-A).

On January 17, 2017, a French court issued an attachment order seizing the Painting pending the outcome of their investigation (*Id.* at ¶14). Pourrieres was served with a copy of that order (*Id.*). By this order, the Painting is required to be stored and conserved at Sotheby's offices in Paris, and will remain there until further determination by the French court. (See order as Exhibit 2 to Pourrieres Decl.) That very same day, plaintiff commenced this action for breach of contract against Pourrieres.

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[1] According to a January 17, 2017 article from the New York Times, Mr. Ruffini's lawyer, Philippe Scarzella, … called into question the validity of Orion's scientific investigation, adding, "I have a thick file on this painting and many experts have declared the 'St. Jerome' was genuine." https://www.nytimes.com/2017/01/17/arts/second-old-master-painting-a-fake-sothebys-says-in-lawsuit.html?_r=0
"…no one disputed the basic origin of the painting. It was more than 400 years old, everyone who examined it agreed. That is, until a man named James Martin turned his attention to *St. Jerome*. http://www.npr.org/sections/thetwo-way/2017/01/18/510414194/sothebys-contends-painting-that-sold-for-842-500-is-a-fake

Counsel for Sotheby's who signed the complaint in this case, was also copied on the January 3, 2017 email from Sotheby's General Counsel (*supra*) and was therefore aware that the Painting would be in Paris to be used as evidence in an ongoing investigation by an Investigative Magistrate. Remarkably, this complaint filed two weeks later fails to disclose that the Painting is currently in Paris, France, in connection with a criminal proceeding where Sotheby's is a joint plaintiff as a result of the complaint they filed in that foreign proceeding. (See Stibbe Decl.) Instead, the Complaint in this case timidly and in bad faith alleges that : "An active, wide-ranging French criminal investigation *is said to be underway*." (emphasis added).

It appears in retrospect that Sotheby's rushed to file its complaint on January 17, 2017, on precisely the same day that the French order attaching the painting was issued, so they could seemingly in good faith avoid disclosing to this Court that the Painting is attached in France; and that any U.S based experts who might be designated to conduct a further analysis of the Painting in connection with this proceeding will not have access to it. Additionally, the Complaint fails to address the monetary relief that Sotheby's is demanding in France, and which they have so far concealed to Pourrieres and to this Court (Stibbe Decl. at ¶4-C).

## ARGUMENT

### I. PLAINTIFF FAILED TO STATE A CLAIM FOR BREACH OF CONTRACT

To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although well-pled factual allegations must be accepted as true, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678. Plaintiff's breach of contract claim fails under this standard because it fails to state a claim upon which relief can be granted.

In resolving a Rule 12(b)(6) motion, the Court should confine its consideration "to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken." *Leonard F. v. Israel Disc. Bank of N.Y.*, 199 F.3d 99, 107 (2d Cir. 1999); *Cortec Indus. Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir. 1991) (citing *Cosmas v. Hassett*, 886 F.2d 8, 13 (2d Cir. 1989) (holding that complaint is deemed to include any written instrument attached to it or any statements or documents incorporated by reference)).

Quoting the first sentence of Paragraph 9 of the Contract in its complaint, Sotheby's alleges that Pourrieres breached the contract by refusing to remit the payment due and owing to Sotheby's because of the rescission of the sale of the painting. (*see* Complaint DE#1 at ¶ 33). However, Sotheby's conveniently failed to quote or allege the second sentence of paragraph 9 of the contract, which is the one setting forth the conditions for Pourrieres to return the sales proceeds:

> If we receive from a purchaser notice of intention to rescind ***and*** we determine that the Property is subject to rescission under the Terms of Guarantee or as otherwise set forth above, **we will credit the purchaser with the purchase price**, you will return to us any sale proceeds for such Property paid by us to you…**and we will return the Property to you**. (emphasis added)

(See Contract is attached as Exhibit 1 to Pourrieres Decl.)

Sotheby's has failed to plead that a notice of intention to rescind from the purchaser of the painting was received, thereby triggering the obligation of a seller to remit payment to Sotheby's in the event Sotheby's elects to rescind the contract.

Under paragraph 9, the purchaser's notice of intention to rescind is a necessary prerequisite creating the obligation of a seller to remit payment of sale proceeds to plaintiff in connection with a rescission of the contract. Accordingly, as allegations of the purchaser's notice of intention appear nowhere in the complaint, plaintiff cannot prevail on its claim that Pourrieres has breached the contract by, "refusing to remit the payment due and owing to Sotheby's." (Complaint DE#1 at ¶20).

Furthermore, the Complaint fails to allege that Sotheby's credited the purchaser as per Paragraph 9 of the Contract *supra*. Instead, the Complaint timidly alleges that "Sotheby's *is refunding* the full purchase price to the purchaser." (Emphasis added). Complaint DE#1 at ¶18. The use of the present tense as opposed to the past tense can only be interpreted as an admission that plaintiff has not yet credited the purchaser, which is a prerequisite for defendant's return of the sale proceeds: "we will credit the purchaser with the purchase price, you will return to us any sale proceeds for such Property …."

Plaintiff has failed to plead any grounds upon which defendant would be obligated under the contract to remit the proceeds of the sale of the painting. Therefore, defendant has not breached the contract, and plaintiff's complaint should be dismissed.

## II. THE ACTION SHOULD BE DISMISSED ON THE GROUND OF FORUM NON CONVENIENS

*Forum non conveniens* permits dismissal of an action when "a court abroad is the more appropriate and convenient forum for adjudicating the controversy." *Sinochem Intern. Co. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 425, (2007).

Under the doctrine of *forum non conveniens*, this Court can decline to exercise jurisdiction where, as here, "trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Strategic Value Master Fund, Ltd. v. Cargill Fin. Servs., Corp.*, 421 F. Supp. 2d 741, 753 (S.D.N.Y. 2006) (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249 (1981)).

Under the Second Circuit's *forum non conveniens* analysis this Court must "(1) evaluate the level of deference to which plaintiff's choice of forum is entitled, (2) determine the availability of an "adequate alternative forum," and (3) if such forum exists, balance relevant public and private interests, and conclude, based on that balance, whether plaintiff's choice of forum may stand." *Acosta v. JPMorgan Chase & Co.*, 219 Fed. Appx. 83, 85 (2d Cir. 2007) (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003)). Each of these three factors, which are addressed below, weigh in favor of dismissing this action in favor of France.

In considering a defendant's motion to dismiss for *forum non conveniens* grounds, this Court may consider affidavits, affirmations and exhibits submitted in connection with the motion. *See Goldberg v. UBS AG*, 660 F. Supp. 2d 410, 419 (E.D.N.Y. 2009). *See also Construtora Norbeto Oderbrecht S.A. v. GE*, 2007 U.S. Dist. LEXIS 79219 (S.D.N.Y. Oct. 11, 2007) ("On a motion to dismiss pursuant to *forum non conveniens*, a court considers not only the allegations of the pleadings but all evidence before it, and does not presume the facts pleaded to be true.")

A. Plaintiff Sotheby's choice of forum deserves little deference

1) France is the locus of this action

Sotheby's alleged right to rescind the contract and thus to seek the return of the sale proceeds is solely based on its contention that the Painting is a forgery: Sotheby's unique "claim for relief" is confined between paragraphs 24 and 34 of its Complaint. Sotheby's alleges that "[p]ursuant to the terms of the Contract, Sotheby's has the right to the rescind the Sale if, *inter alia*, it learns that the Painting (1) "is inaccurately described in the catalogue," (2) "is a counterfeit (a modern forgery intended to deceive)," or (3) if Sotheby's determines, in its sole judgment, that the sale of the Painting may subject it to "any liability." (Complaint DE#1 at ¶28.)

Consistent with (1) and (2) *supra*, plaintiff's sole alleged reason for rescinding the sale is its contention that the painting "is a modern forgery and, as such, was inaccurately described in Sotheby's catalogue. Sotheby's invoked its right under the Contract to rescind the Sale and demanded that defendant return the Sale proceeds he had received from Sotheby's." See *Id.* at ¶31-32."

In other words, Sotheby's claim for the return of the sale proceeds is solely based on its contention that the Painting is a forgery. In fact, throughout the Complaint, the Painting is described as a forgery: See for example ¶11 "Sotheby's is refunding in full the monies it received from the buyer of the *forged* Painting but, despite his clear obligations, defendant refuses to refund the hundreds of thousands of dollars that he received…" (emphasis added).

Therefore, the Painting is the subject matter of this dispute and while this Court will necessarily need to determine whether the Painting is a forgery, it will not be able to because the Painting is in France, and also attached there by a court order in connection with Sotheby's criminal action there.

It will therefore be very inconvenient, and virtually impossible, for this Court to adjudicate the authenticity of a painting that is located several thousand miles away from this forum. "The central purpose of any *forum non conveniens* inquiry" is, after all, "to ensure that the trial is convenient." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981).

2) Sotheby's has waived the forum selection clause by transferring the subject matter of this lawsuit to France and by filing claims there before commencing this lawsuit

The Consignment Agreement contains a forum selection clause in favor of New York courts: (Exh. 1 to Pourrieres Decl. at ¶18)

The presumption that a forum selection clause is valid can be rebutted by showing that "enforcement would be unreasonable or unjust, or that the clause was invalid for such reasons as fraud or overreaching." *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 384 (2d Cir. 2007). (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, (1972)).

"[A] forum selection clause will be deemed waived if the party invoking it has taken actions inconsistent with it, or delayed its enforcement, and other parties would be prejudiced." *In re Rationis Enterprises*, 1999 U.S. Dist. LEXIS 34 at *2 (quoting *In re Deleas Shipping Ltd.*, 1996 A.M.C. 434 (W.D.Wash. 1995)).

By transferring the Painting to its Paris office and by filing a criminal complaint in France seeking relief on the same subject matter as the present dispute: namely the authenticity of the Painting, Sotheby's has, *before* the filing of the instant action, taken actions inconsistent with the forum selection clause, and has rendered enforcement of the forum selection clause unreasonable and unjust. Defendant Pourrieres, who was served with a copy of the order in the French Action, is prejudiced because he has to be represented by counsel in two different jurisdictions in connection with the same issue: the authenticity and ownership right to the Painting.

As further evidence that Sotheby's waived the forum selection clause, the Complaint does not even plead the forum selection clause (See Complaint DE#1 at ¶¶4-7 "Parties and Jurisdiction"). This Court should therefore deem the forum selection clause waived and should disregard it.

B. France is an adequate forum

An alternative forum is adequate "if the defendants are amenable to service of process there, and if it permits litigation of the subject matter of the dispute." *Norex Petroleum Ltd.*, 416 F.3d 146, 157 (2d Cir. 2005) (quoting *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 75 (2d Cir. 2003)). See *also Capital Currency Exch., N.V. v.*

*Nat'l Westminster Bank PLC*, 155 F.3d 603, 609 (2d Cir. 1998) (quoting *Piper*, 454 U.S. at 254 n.22).

Defendant Pourrieres is amenable to service in France because he is a French citizen. (See *Overseas Media, Inc. v. Skvortsov*, 277 Fed. Appx. 92, 97 (2d Cir. 2008) "It is undisputed that Skvortsov, as a Russian citizen, is amenable to service of process in Russia." In addition, since the plaintiff is a party to a related criminal action pending in France, this Court should find that France permits litigation of the subject matter of the dispute.

> The district court relied on the fact that at least one of the plaintiffs in this action is also involved in a related infringement action pending in Russia to conclude that the Russian courts would permit litigation of the subject matter in dispute. We find no abuse of discretion in the district court's finding that Russia would provide an adequate alternative forum.
>
> *Id.*

Because defendant is a French citizen and plaintiff Sotheby's is a party to a French criminal action on the same subject matter, and that Sotheby's does business in France, where it has offices, this Court should find that France is unequivocally an adequate forum for all parties and for this case.

In addition, Courts in this Circuit have recognized on multiple occasions that France has a well-developed legal system and is an appropriate alternate forum, including, as here, to adjudicate breach of contract claims. See for example *Trigano v. Bain & Co.*, 1999 U.S. App. LEXIS 14626 (2d Cir. 1999); *Alamir v. Callen,* 750 F. Supp. 2d 465 (S.D.N.Y. 2010) In addition, France "shares [New York's] notions of procedure and due process of law" *SerVaas, Inc. v. Republic of Iraq*, 2012 U.S. Dist. LEXIS 15569, 16-17 (S.D.N.Y. Feb. 1, 2012) (quoting *John Galliano, S.A. v Stallion, Inc.*, 15 NY.3d. 75, 81 (2010)).

Furthermore, there is a consensus among U.S. federal courts that French judicial proceedings are procedurally fair. See e.g., *Int'l Nutrition Co. v. Horphag Research Ltd.*, 257 F.3d 1324, 1330-31 (Fed. Cir. 2001) (stating that "the French courts abided by 'fundamental standards of procedural fairness,' . . . and [finding] no abuse of discretion in the district court's judgment that international comity should be extended"; *Gambra v. Int'l Lease Fin.* Corp., 377 F. Supp. 2d 810, 817 (C.D. Cal. 2005) (granting motion to dismiss on forum non conveniens grounds in part because "French courts have a rigorous judicial system that seeks to promote fair proceedings and debate.")

Here, not only is France the most suitable and available forum, but it has been Sotheby's primary choice to adjudicate its claims relating to the Painting.

C. Balancing of public and private interests favors dismissing this action in favor of France

The final step of the *forum non conveniens* analysis requires the court to consider the private and public interest factors discussed in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). *See Iragorri v. United Techs. Corp.*, 274 F.3d 65, 73-74 (2d Cir. 2001).

The private factors include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Id.* (quoting *Gilbert*, 330 U.S. at 508). This requires "a comparison between the hardships defendant would suffer through the retention of jurisdiction and the hardships the plaintiff would suffer as the result of dismissal and the obligation to bring suit in another country." *Id.* at 74.

The public factors include congestion in the courts, interests of forums in "having localized controversies decided at home," interest in not imposing jury duty on people in a community that has no interest in the litigation, and the appropriateness of the application of foreign law. *Id.* (quoting *Gilbert*, 330 U.S. at 508-09).

Here, because the Painting is attached in France as a result of an order of a French Court, the source of proof as to its authenticity is only accessible in France, the only place where the Painting may be (and will likely remain in connection with the French Action) examined by other labs, experts and scientific means. With the exception of Orion, all the persons with knowledge and expertise as to the Painting's authenticity and history speak French, are in France, or are French: Ruffini, Ferillon, Etienne, and Pourrieres. In other words, the trial would be less expensive and more practical in France.

In addition, Sotheby's is an international company engaging in a massive amount of business in France, and which has already filed suit there on the same subject matter, and would suffer no hardship in having this case dismissed. Similarly, Pourrieres, a French citizen would suffer no hardship in litigating this case in France, given that Pourrieres is French and that there is already a case pending on the same subject matter. On the other hand, if this case is allowed to continue in New York, and assuming that Sotheby's prevails, although it should not, Pourrieres could possibly be directed to return the payment it received from Sotheby's for the sale of his Painting while, unfairly and inconsistent with the terms of the Contract, plaintiff could not return the Painting to Pourrieres as a consequence of the French attachment order. This would be an incredibly unjust outcome to Pourrieres, a *bona fide* purchaser and seller of the Painting. Therefore, an analysis of the private factors militates in favor of dismissal.

Likewise, the public factor points to a determination that *forum non conveniens* is appropriate in this case: thus, notwithstanding whether this case will continue or will be dismissed, there is *already* a pending case (the French Action), which is poised to address the issues raised by the instant lawsuit. There is therefore no concern of congestion of the French court, which is already investigating the authenticity of the Painting. Finally, as aforementioned, France is an adequate system to resolve contract law disputes.

For all the above reasons, this case belongs in France and not in New York. Meanwhile, this District has repeatedly been acknowledged as one of the busiest in the nation. See *Abert Trading, Inc. v. Kipling Belg. N.V./S.A,* 2002 U.S. Dist. LEXIS 3109 at *18 (S.D.N.Y. Feb. 26, 2002) ("In the context of a forum non conveniens inquiry, it is well-recognized that the Southern District of New York is a congested district, and there is a legitimate interest in ensuring that disputes with little connection to the district be litigated elsewhere.") Therefore, this action should be dismissed on the ground of *forum non conveniens*.

## CONCLUSION

For the reasons stated above, the Court should dismiss Plaintiff's complaint, or in the alternative, stay this proceeding until the resolution of the pending French lawsuit.

Dated: March 23, 2017

Respectfully submitted,

KELLNER HERLIHY GETTY & FRIEDMAN, LLP

By: ______________________________

Thomas Vandenabeele (TV-3112)
*Attorneys for Defendant Lionel de Saint Donat Pourrieres*
470 Park Avenue South—Seventh Floor
New York, New York 10016-6819
(212) 889-2121